

# Exhibit D

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**IN RE EDNY CATHODE RAY TUBE  
ANTITRUST CASES**

This Document Relates To:

*Electrograph Sys., Inc., et al. v. Hitachi Ltd.,  
et al.*, Case No. 2:17-cv-02365-BMC  
(E.D.N.Y.)

*Schultze Agency Servs., LLC, et al. v. Hitachi  
Ltd., et al.*, Case No. 1:17-cv-02363-BMC  
(E.D.N.Y.)

*P.C. Richard & Son Long Island Corp., et al.  
v. Hitachi Ltd., et al.*, Case No. 1:17-cv-  
02368-BMC (E.D.N.Y.)

*Office Depot, Inc., et al. v. Hitachi Ltd., et  
al.*, Case No. 1:17-cv-03409-BMC  
(E.D.N.Y.)

*Compucom Sys. Inc., et al. v. Hitachi Ltd., et  
al.*, Case No. 1:17-cv-03283-BMC  
(E.D.N.Y.)

*Interbond Corp. of Am., et al. v. Hitachi Ltd.,  
et al.*, Case No. 1:17-cv-03285-BMC  
(E.D.N.Y.)

**LEAD CASE: 1:17-cv-04504-BMC**

**DEFENDANTS' RESPONSE AND  
INITIAL DRAFT PROPOSED FINAL JURY INSTRUCTIONS**

Pursuant to our agreed-upon schedule, the Court's August 1, 2017 Order Regarding Pre-Trial Schedule (ECF No. 3), and the Court's September 28, 2017 Stipulation and Order Concerning Certain Pre-Trial-Deadlines (ECF No. 27), defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Consumer Products, L.L.C., Toshiba America Information Systems, Inc., Toshiba America Electronic Components, Inc., Panasonic Corp., and MT Picture Display, Co., Ltd. (collectively, "Defendants") hereby provide their response to Plaintiffs' October 4, 2017 submission of draft instructions and initial draft proposed final jury instructions.

The contents of this draft are based on rulings made thus far by the Court, and are contingent on any future rulings made by the Court, without waiver of any of Defendants' previously stated positions on these issues for purposes of appeal or otherwise. Defendants reserve the right to amend, supplement, or otherwise revise these drafts as appropriate, including, but not limited to, based upon any stipulations between the parties, the Court's rulings on any motions, proof at trial, Plaintiffs' or Defendants' pursuit or abandonment of any claims or defenses, or as is otherwise reasonable and appropriate. Defendants do not intend to waive and are not waiving, any of their objections to any drafts as may be proposed by Plaintiffs.

**[NEW INSTRUCTION]**

**PROPOSED FINAL INSTRUCTION NO. 48:**

**DAMAGES - MULTIPLE PLAINTIFFS**

If you award damages, you will be asked what sum of money would fairly and reasonably compensate each plaintiff. If you find that more than one plaintiff is entitled to recover damages, exercise caution to be sure that each plaintiff is awarded damages only for its own injuries.

**SOURCE:** ABA Section of Antitrust Law, Model Jury Instructions in Civil Antitrust Cases at 6.B.15 (2016 ed.) (multiple plaintiffs); *World Trade Ctr. Props. LLC v. Am. Airlines, Inc. (In re September 11 Litig.)*, 802 F.3d 314, 334 (2d Cir. 2015) (noting that compensating Plaintiffs a second time for the same loss “would be ‘wholly inappropriate’ under compensatory damages principles” (citations omitted)); *Drug Mart Pharmacy Corp. v. Am. Home Prods. Corp.*, 378 F. Supp. 2d 134, 139 (E.D.N.Y. 2005) (holding that an “attempt to recover twice for the same wrong provides an independent and sufficient reason to dismiss plaintiffs’ conspiracy claims pursuant to the Robinson-Patman Act”).